

## MODEL LEASE CLAUSE

### **Make Tenant Responsible for Certain ADA Upgrades**

The following Model Lease Clause, drafted by Sacramento attorney Winnifred C. Ward, defines ADA and states that you are responsible for upgrades in common areas except under certain circumstances, such as when an upgrade is necessary because of the tenant's alteration of its premises, or because the tenant's specific use of its premises that's different from other tenants in the building triggers the need for upgrades. Show this clause to your attorney before using it in your leases.

#### **ADA COMPLIANCE**

Landlord and Tenant acknowledge that the Americans With Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.*) and regulations and guidelines promulgated thereunder, as all of the same may be amended and supplemented from time to time (collectively referred to herein as the "ADA"), establish requirements for business operations, accessibility, and barrier removal, and that such requirements may or may not apply to the Premises, the Building, and the Project depending on, among other things: (1) whether Tenant's business is deemed a "public accommodation" or "commercial facility"; (2) whether such requirements are "readily achievable"; and (3) whether a given alteration affects a "primary function area" or triggers "path of travel" requirements. The parties hereby agree that:

- a. Landlord shall be responsible, at its sole cost (except to the extent properly included in Operating Expenses), for requirements under Title III (public accommodations) of the ADA ("ADA Title III") in the Common Areas, except as provided below;
- b. Tenant shall be responsible, at its sole cost, for ADA Title III compliance in the Premises, including any leasehold improvements or other work to be performed in the Premises under or in connection with this Lease;
- c. Landlord may perform, or require that Tenant perform, and Tenant shall be responsible for the cost of, ADA Title III "path of travel" requirements triggered by Tenant's alterations in the Premises;
- d. Landlord may perform, or require Tenant to perform, and Tenant shall be responsible for the cost of, ADA Title III compliance in the Common Areas necessitated by the Building being deemed to be a "public accommodation" instead of a "commercial facility" as a result of Tenant's use of the Premises that differs from the use of other tenants in the Building; and
- e. Tenant shall be solely responsible for requirements under Title I (disabled employee rights) of the ADA relating to Tenant's employees.